complainant that he should grant to the defendant such equitable relief even though there is no right at common law. This principle is applicable to cases in equity in which the Statute of Limitations has barred the debt or claim which the defendant seeks to use as a set-off. *Dewalsh* v. *Braman,* 160 Ill. 415, 43 N. E.; *Tracy* v. *Wheeler,* 15 N. D. 248, 107 N. W. 68. It would appear then that the counterclaim should be given effect in equity regardless of the lien of the defendant company.

CRIMINAL LAW—INDEFINITE SUSPENSION OF SENTENCE.—The accused, pleading guilty to an indictment for embezzlement, was sentenced to imprisonment in the penitentiary for five years, the shortest term which could be imposed upon him. At his request, the court ordered "that the execution of the sentence be, and it is hereby suspended during the good behavior of the defendant, and for the purpose of this case this term of this court is kept open for five years." *Held,* that mandamus should issue directing the judge to vacate the order of suspension, such issue to be stayed until the end of the term to give ample time for executive clemency or such other action as might be required to meet the situation. *Ex parte United States, Petitioner,* 37 Sup. Ct. 72.

To justify such indefinite suspension, it is necessary to find that a court has inherent judicial power to so act, either existing at common law or expressly given by statute. As there was no statute giving that power to the court acting in the principal case, the validity of its decision must rest upon common law principles. Decisions generally agree that a court has the power to suspend or stay the execution of a sentence temporarily, for a reasonable time, pending an appeal, to allow the defendant to move for a new trial, or for similar reasons, some of the holdings being based expressly on a common law right. However, there is a direct conflict as to the right of a court to suspend sentence indefinitely, the better rule and weight of authority apparently supporting the ruling of the principal case. For complete citation of authorities on both sides of the question see—14 L. R. A. 285, Note; 33 L. R. A. N. S. 112, Note; 39 L. R. A. N. S. 242, Note; L. R. A. 1915C 1169, Note.

EVIDENCE—NECESSITY FOR CORROBORATION IN DIVORCE ACTION.—Plaintiff sued his wife for divorce on the ground of adultery, his testimony showed clearly that he and his wife had been separated for more than four years because of his wife's open misconduct in living with one Preddie as Preddie's wife. The court said, "The testimony in this case, if believed, and I see no reason to doubt its truth, shows that the petitioner has a meritorious case," but there was no witness to corroborate the petitioner's statements, and the court refused a decree, saying, "It is an inflexible rule in this state that a divorce will not be granted upon uncorroborated testimony or admission of a party to the suit. Not only does this apply to the cause but to every element in the proofs necessary to sustain it." *Garrett* v. *Garrett* (N. J. 1916), 98 Atl. 848.

It was the practice in the Ecclesiastical Courts, the source of our common law of divorce, that no divorce could be granted on the uncorroborated con-

fession or admissions of the parties, owing to the danger of fraud and collusion or of coercion on the part of the husband. This rule has been generally adopted in this country either by the courts or by statute. The New Jersey Courts have held to the doctrine in the instant case, that under no consideration will a divorce be granted unless petitioner's testimony is corroborated, but corroboration may be made by the testimony of the defendant, when clear and manifestly without collision. *Hague* v. *Hague* (N. J. Eq.), 96 Atl. 579. *Williams* v. *Williams,* 78 N. J. Eq. 13, 85 Atl. 611. Though some cases seem to hold that it is sufficient corroboration if the circumstances, as shown by the expressions and conduct of the defendant, sustain the petitioner's testimony without any other witnesses. *Foote* v. *Foote,* 71 N. J. Eq. 273, 65 Atl. 205. Where other circumstances show there can be no collusion, or where the defendant vigorously fights the case, so as to leave no doubt as to the truth of the confession, or where confessions are made under conditions precluding suspicion of collusion, the reason for the rule demanding corroboration fails and most courts give a decree in accordance with *Foote* v. *Foote,* supra, even in states where statutes require corroboration, on the basis that where the statutes are in affirmance of common law they are to be construed as was the rule at common law. *Burke* v. *Burke,* 44 Kan. 307, 24 Pac. 466, 21 Am. St. Rep. 283. The New Jersey Courts go further than other courts in that they require corroborating evidence to every necessary element in the proofs, while other courts hold it sufficient if the corroborating evidence tends to support the complaint. *Williams* v. *Williams,* 81 N. J. Eq. 17, 85 Atl. 611; *Hertz* v. *Hertz,* 126 Minn. 65, 147 N. W. 825; *Allen* v. *Allen,* 188 Mich. 532, 155 N. W. 488.

EVIDENCE—RES GESTAE IN ABORTION.—On trial for abortion, it appeared that the deceased woman went to defendant's home on February 7th, and stayed till February 13th, when she returned to her mother's home; she returned to the defendant's home on February 15th and died there February 17th. The mother was allowed to testify to the declarations made by the deceased on February 14th as to the treatment given by defendant. The lower court said to the jury, "if the abortion was complete at the time of the declaration it was without probative effect; but if the abortion was at the time incomplete it could be considered as a part of the res gestae." *Held,* that the instruction was correct. *State* v. *Newell* (Minn. 1916), 159 N. W. 829.

The case agrees in result with the majority of the decisions, but different courts have given different reasons for admitting such evidence. In *State* v. *Hunter,* 131 Minn. 252, 154 N. W. 1083, the court, admitting the evidence on the basis of res gestae said, "Such declarations under particular restrictions are admissible when clearly shown to be part of the res gestae," and quote from JONES, COMM. ON EV., §344, as follows: "This rule * * * is a law unto itself, consisting of many of the ordinary rules of evidence, but primarily of relevancy; apparently setting at naught many of the exceptions, but in reality presenting a complete system of self-regulation to meet the necessities and demands of complete proof." To the same effect